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BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of the Application of
SEATTLE CHILDREN'S HOSPITAL
for approval of a Major Institution Master Plan

Hearing Examiner File No. CF 308884

LAURELHURST COMMUNITY CLUB'S
APPEAL OF HEARING EXAMINER'S
FALLBACK PROVISION AND
CONDITIONS AND RELATED
FINDINGS AND CONCLUSIONS

I. INTRODUCTION

Before the adoption of the Seattle Major Institutions Code three decades ago, land use (then called "zoning") decisions on major institution development were made on a fragmented basis. The harmful effects on neighborhoods were obvious. Without firm boundaries, without restrictions on incursions into adjacent neighborhoods, without reasonable height limits, without strong disincentives to demolition of housing, and without realistic development targets, adjacent neighborhoods bore the brunt of institutional expansion with no balancing of impacts and alternatives. While limitations on revered major institutions were not popular in the Municipal Building, it eventually became clear that something had to be done to strike a balance. Thus was the Major Institutions code born: to strike that balance in

LAURELHURST COMMUNITY CLUB'S APPEAL OF HEARING
EXAMINER'S FALLBACK PROVISION AND CONDITIONS AND
RELATED FINDINGS AND CONCLUSIONS - 1 of 37



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1 land use between vital institutions on the one hand and, on the other, vibrant residential
2 neighborhoods and business districts, which are also critical to the health of the City.

3 For thirty years, since the adoption of the original Major Institutions Code, the Council
4 has relied on the Hearing Examiner to conduct an in-depth review and provide the Council
5 with a recommendation on whether and how an institution's proposed Master Plan should
6 proceed. The Examiner's review and recommendation is the culmination of the City's Major
7 Institution process. And her review is the only review not subject to outside pressure, internal
8 City politics, or other distortions.¹
9

10 In this case, the Hearing Examiner's hearings concerning Seattle Children's Hospital
11 ("Children's" "SCH") Major Institution Master Plan ("MIMP," "Master Plan") took the better
12 part of eight days. SCH was represented at the hearings by two lawyers (with yet another one
13 signing on Children's briefs). A City Attorney also appeared, supporting Children's, as did
14 the attorney for Laurelon Terrace Condominiums, whose unit owners will realize a windfall
15 of millions of dollars over market value if Children's full development plan is approved as
16 proposed.² A former City Councilmember, Peter Steinbrueck was hired by Children's as a
17 paid "consultant." He sat prominently in the hearing room for several days and testified on
18 Children's behalf. The Examiner heard and read testimony from a host of Children's staff,
19 paid consultants, experts, attorneys, and supporters and she considered thousands of pages of
20 exhibits.
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22

23 ¹ There were considerable distortions in the Children's Citizens Advisory Committee ("CAC") process
24 that preceded Hearing Examiner review. For example one "at large" member of the CAC was a full-
25 time employee of the University of Washington involved in its development plans. Yet, Children's is
26 the work venue for many of the University's medical staff, creating a built-in conflict.

² Per contractual arrangements, Laurelon Terrace's attorney, although representing himself as
independent, was apparently funded in part by Seattle Children's.

1 Still, despite having all the advantages, as the record closed Children's had still not
2 satisfactorily addressed key issues. As the Examiner observed:

3 Public comment uniformly supported the mission of Children's and applauded its
4 work in the region. However many members of the public questioned the
5 need for Children's to nearly triple the size of its existing facilities or to
6 accommodate the state's entire need for specialty pediatric care.

7 August 11, 2009 Hearing Examiner Findings and Recommendation ("HE F&R") Finding 40,
8 at 8.

9 Ultimately, the Examiner recommended that the Council deny Children's Proposed
10 MIMP. She based this recommendation on the City's policies and code requirements and the
11 substantial evidence in the record before her. As she made clear, the denial recommendation
12 was essentially forced by Children's, which had insisted on an all or nothing approach:

13 Children's did not evaluate any alternatives that included less than 2.4 million
14 square feet of development area. Instead, the alternatives considered different
15 ways to configure the same amount of development space on the existing campus
16 and Hartmann site, and later, on an expanded campus that included both the
17 Laurelon Terrace and Hartmann sites. This made it impossible for anyone to
18 determine what facilities might be lost, and what portion of total need unmet, if
19 development square footage had to be reduced in order to protect the livability
20 and vitality of adjacent neighborhoods.

21 HE F&R, Finding 41, at 8.

22 In this situation, it is essential to scrutinize need relative to alternative
23 development scenarios. Children's has avoided this scrutiny by not providing any
24 alternatives that would afford less than 2.4 million square feet of development
25 area. The Code provides that "appropriate" institutional growth within boundaries
26 is to be permitted while minimizing associated adverse impacts. SMC 23.69.002
A. And the major institution's ability to change, and benefits associated with that
change, are to be balanced with the need to protect the livability and vitality of
adjacent neighborhoods. SMC 23.69.002 B. The Code does not dictate what that
balance should be. Therefore, even if Children's could demonstrate that it should
absorb the entire statewide need for specialty pediatric care, it is not necessarily
entitled to this intensity of development, in this place, at this time.

1 Id., Conclusion 46, at 30 (emphasis added).

2 Laurelhurst Community Club (LCC) supports the Examiner's findings and conclusion
3 and recommendation of denial, which is soundly based and fully supported in the record and
4 the law. Any appeal of the Examiner's recommendation of denial should be rejected by
5 Council.

6 At the same time, LCC notes that the Examiner's denial recommendation was
7 followed by a fallback provision:

8 However, if the Council decides to approve the Master Plan, the Examiner
9 recommends that it be approved as modified by, and subject to the
10 conditions enumerated below.

11 HE F&R, at 30. The Examiner then added that, if the Council approved the Master Plan (as
12 modified by the 43 listed conditions), "the Council should also approve rezones for the Major
13 Institution Overlay height districts as illustrated in Exhibit 93, which is attached to this
14 Recommendation." Id.

15 LCC is therefore submitting this appeal of the Examiner's fallback provision,
16 alternative conditions and related findings and conclusions. LCC again emphasizes, however,
17 that it fully supports the Examiner's primary and fundamental conclusion that Children's
18 MIMP proposal must be denied. LCC therefore requests that the Council adopt the
19 Examiner's recommendation and deny the MIMP proposal. However, in the event the
20 Council disagrees with the Examiner's recommendation, LCC requests that the Council
21 remand with instructions that Children's prepare for review through the MIMP process a new
22 proposal consistent with the more moderate (but still intensive) development alternative
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presented by LCC to the Hearing Examiner, and described in this appeal. *See* Hearing Examiner Exhibit (“Ex.”) 21 and 22.³

II. CHILDREN’S PROPOSAL IN BRIEF

Seattle Children’s Hospital applied to the City for approval of a new MIMP pursuant to the Major Institutions Code, found in SMC Chapters 23.69 and 23.76. Children’s Laurelhurst campus is located within an existing Major Institution Overlay (“MIO”) under a MIMP approved in 1994. Existing facilities include a hospital with 250 beds (230 of which are acute care) in 200 patient rooms, a clinic, and clinical research, office and laboratory space, for a total building area within the MIO of 900,000 square feet. August 11, 2009 HE F&R, Finding 8, at 3.

Children’s proposed MIMP would allow it to almost triple in size, developing, over the next twenty years, an additional 1.5 million square feet, for a total of 2.4 million gross square feet. Children’s refused throughout the Master Plan process to lay on the table any alternative for less than 2.4 million gross square feet of development. *Id.*, Finding 20, at 5.

“Alternative 7R” is Children’s “preferred alternative.” *Id.*, Finding 21, at 5. This plan would expand the MIO boundary to take in the 136-unit Laurelon Terrace Condominiums to the west. Significantly, it would also, for the first time, leapfrog Children’s major institution boundaries across Sand Point Way by encompassing the Hartmann site. *Id.*

Children’s has purchased 101 Laurelon Terrace units and holds an option to purchase the entire 136-unit complex. *Id.* Children’s owns the Hartmann site and proposes to construct

³ LCC’s development scenario described in this appeal is consistent with conditions presented to the HE in March, in Exhibit 22 (pages 17-18) and Attachments J and K, with the exception that LCC’s housing condition was modified at the July hearing, and is in Exhibit R-13, Attachment B.

1 150,000 square feet of development and 225 parking spaces on it. Under Children's preferred
2 proposal, Laurelon Terrace would be demolished, and development/redevelopment of the 2.4
3 million square feet (total) under the proposed MIMP would occur in four phases. HE F&R,
4 Finding 22, at 5. To develop under the MIMP, Children's has also proposed an MIO district
5 height rezone to 160 feet in the west/central portion of the campus, straddling the boundary
6 with the Laurelon Terrace property. HE F&R, Finding 65, at 12. The highest MIO in the
7 existing master plan is 90 feet and buildings in part of that district are conditioned with a 74'
8 height limit. Thus, the proposal would nearly double allowed building heights on the campus.
9

10 **III. ROLE OF APPELLANT LAURELHURST COMMUNITY CLUB**

11 Since 1920, the Laurelhurst Community Club has advocated for the Laurelhurst
12 community including in matters concerning land use and development. LCC's role in the
13 major institution process for Children's has been recognized by the City over the entire
14 existence of the Major Institutions Code. LCC members will be directly and substantially
15 affected by the outcome of the current Master Plan proceedings. Children's proposal to nearly
16 triple in size, significantly expand major institution boundaries including across a major
17 arterial, and add functions that State and County policy and other health care institutions and
18 professionals suggest should be provided elsewhere would push Laurelhurst beyond the
19 tipping point of neighborhood viability. LCC's interest in the Council's review and
20 affirmance of the Hearing Examiner's recommendation is therefore immediate and urgent.
21

22 **IV. SUMMARY OF SPECIFIC OBJECTIONS**

23 Although the Examiner's strong recommendation based on the entire record before her
24 is the outright denial of the proposed Master Plan for Children's Hospital, as noted above, this
25
26

1 recommendation is followed by a fallback provision:

2 However, if the Council decides to approve the Master Plan, the Examiner
3 recommends that it be approved as modified by, and subject to the conditions
enumerated below.

4 HEF&R, at 30. The Examiner then states:

5 If the City Council approves the Master Plan as modified, the Council should also
6 approve rezones for the Major Institution Overlay height districts as illustrated in
Exhibit 93, which is attached to this Recommendation.

7 LCC understands why the Examiner took this step. She wanted to provide an option
8 in the event that Children's high pressure approach led to a different outcome than the one
9 dictated by the law and the facts as determined by the Examiner. However, as the Examiner
10 herself acknowledged, these contingent conditions do not achieve the required balance
11 between public need and the livability and vitality of surrounding neighborhoods. LCC
12 therefore objects to and appeals the Examiner's fallback provision including, inter alia, the
13 following portions of the Examiner's decision⁴:
14

15 (a) **Condition No.1 (Relating to overall square footage):**

16 Condition No.1 reads:

17 *Children's shall limit total development on the expanded campus to a total of 2.4*
18 *million gross square feet, excluding parking.*

19 This fallback condition is inconsistent with the Examiner's findings and conclusions
20 respecting the proposal's height, bulk and scale, transportation and land use impacts, and its
21

22
23 ⁴ LCC also appeals and incorporates by reference the appeal of the Hearing Examiner' fallback
24 conditions filed by the Seattle Displacement Coalition and the Interfaith Task Force on Homelessness.
25 Any approval of the MIMP based on these fallback conditions would be antithetical to the purpose of
the Code's comparable replacement requirement and would represent a diversion of public funds to
support a private development project.

1 failure to achieve the required balance between public need and neighborhood livability and
2 vitality.

3 **(b) Condition No. 3 (Relating to MIO Height Districts):**

4 Condition No. 3 reads:

5 *In areas designated as MIO 160, the maximum height of proposed structures shall not*
6 *exceed 140 feet for the area located north of an east-west line lying 400 feet north of*
7 *the extension of the current south property line of the Children's campus, and 125 feet*
for the area located south of the same line, all as shown on Exhibit 93.

8 Again, this condition, and the Examiner's fallback provision alternatively allowing
9 height district approval, including the requested MIO 160 district, are patently inconsistent
10 with the core Examiner's findings and conclusions respecting the proposal's height, bulk and
11 scale impacts and its failure to achieve the required balance between public need and
12 neighborhood livability and vitality.
13

14 **(c) Hearing Examiner Conclusion Nos. 9 through 12; and Contingent**
15 **Condition Nos. 7 and 9 (Relating to MIO Boundary Expansion to**
Residentially Zoned Hartmann Property across Sand Point Way)

16 LCC appeals the Examiner's fallback provision with respect to its inclusion of the
17 Hartmann Property in the MIO boundary, particularly because her justification is based on
18 accommodating a level of development that the HE herself, in her core denial
19 recommendation, said was too big and failed to achieve the required balance between public
20 need and neighborhood livability and vitality. Conclusion Nos. 9-12 address the Hartmann
21 expansion, concluding that it would be helpful in mitigating the significant adverse
22 transportation and height, bulk and scale impacts the proposed MIMP would have on the
23 neighborhood if the MIMP were approved at full build out. Fallback Condition Nos. 7 and 9
24 relate to development standards for the Hartmann property and assume that such build-out
25
26

1 will be allowed. LCC further appeals these conclusions and conditions because – regardless
2 of the level of overall development – MIO expansion to Hartmann is patently inconsistent
3 with City policies and regulations against institutional sprawl and boundary expansion, and
4 would be inconsistent with required protections for residential neighborhoods as well as with
5 the City’s urban village planning strategy. Any MIMP approval should be conditioned on
6 exclusion of the Hartmann Property from any MIO boundary expansion.

7
8 **(d) Hearing Examiner Conclusion No. 26 (40th Avenue NE Vehicle Access)**

9 Conclusion No. 26 reads:

10 *Although there is significant neighborhood concern about congestion on 40th*
11 *Avenue Northeast, the evidence in the record shows that the two access points*
12 *proposed for this street will operate at LOS C or better, and that moving one of*
13 *the access points to Sand Point Way would degrade traffic operations on that*
14 *arterial. The CAC’s suggestion to limit access from 40th Avenue Northeast to one*
15 *entrance should not be included as a condition if the MIMP is approved.*

16 LCC appeals this conclusion and the Examiner’s fallback provision (in the event the
17 Examiner’s core denial recommendation is not adopted) which would allow two (2) vehicle
18 access points from 40th Avenue NE, diverting institutional traffic off of the arterial onto a
19 neighborhood street – antithetical to the Major Institutions Code and the balance it mandates.
20 At the location in question, 40th Avenue Northwest is a residential, local access street. The
21 “need” for these two institutional access points to be located on such a residential, local
22 access street is premised on full build out (for a total of 2.4 million gross square feet) under
23 the proposed MIMP. Even then, substantial evidence presented to the Examiner refuted
24 Children’s claimed need to usurp neighborhood access for hospital uses. Therefore, in the
25 event the MIMP is approved in any form, whether at full build-out demanded by Children’s or
26 particularly if at a reduced development level (which would negate the claimed rationale for

1 institutional access from neighborhood streets), it should be expressly conditioned to prohibit
2 any hospital access from 40th Avenue NE.

3
4 **(e) LCC also appeals the Examiner's apparent oversight, in her list of**
5 **fallback (contingent) approval conditions, in not including an express**
6 **condition requiring the below-grade construction of the proposed**
7 **Southwest Parking Garage**

8 The Examiner notes in Conclusion 20 that the increased setback along NE 45th Street –
9 recommended by the Examiner in response to the MIMP proposal's significant ("stunning")
10 height, bulk and scale impacts on areas to the southwest -- would likely have the effect of
11 requiring Phase 2's Southwest Parking Garage to be constructed below grade. She further
12 included a contingent condition of approval (Condition 8) that prohibits "above-ground
13 development within the setback areas... except as otherwise allowed in the underlying zone."
14 However, the MIMP's lack of specificity with respect to the actual locations of the buildings
15 it proposes, particularly in Phase 2, including the Southwest Parking Garage, falls short of the
16 minimum clarity required to ensure that these key premises are carried out. Therefore, to
17 ensure consistency with the Examiner's expressed understandings, the fallback conditions, in
18 the event that they become operative, should be supplemented to include an affirmative
19 requirement that the Southwest Parking Garage be built below grade.

20 **V. EXPLANATION OF SPECIFIC OBJECTIONS**

21 **A. The Hearing Examiner's Fallback Condition Which Allows Children's 2.4**
22 **Million Gross Square Feet of Floor Area – Nearly Tripling The Institution's Size**
23 **– Would Be Inappropriate Even if the Master Plan Were Not Denied**

24 The Major Institutions Code requires that the "total maximum developable gross floor
25 area for the MIO district" be defined for the approved development program in each master
26

1 plan. SMC 23.69.030.E.2. The Examiner's Findings and Recommendation pointedly note
2 Children's refusal to study any development alternative that would result in less than 2.4
3 million gross square feet. Children's proposed MIMP – and every master plan “alternative”
4 Children's permitted the process to consider – allowed it to develop 1.5 million new square
5 feet, in addition to the 900,000 square feet permitted in the current master plan, achieving a
6 total of 2.4 million gross square feet of floor area for the MIO campus. HE F&R, Finding 41,
7 at 8. In other words, the proposed “expansion” by itself would be larger than the existing
8 hospital facility and would nearly triple the facility's overall size. In response to Children's
9 intransigence, the Examiner really had no choice other than to recommend denial.
10

11 The Examiner also included a fallback option, enumerating a list of approval
12 conditions that should be imposed, if the Council decided to approve the Master Plan anyway.
13 The first “fallback” condition reads:

14 “Children's shall limit total development on the expanded campus to a total of 2.4
15 million gross square feet, excluding parking.”

16 Condition No. 1, HE F&R, at p. 30. This condition of course is inconsistent with the
17 Examiner's core conclusions respecting the inappropriate size and scale of the proposed
18 MIMP, all supported by substantial evidence in the record reflecting how the magnitude of
19 Children's proposal would drastically and permanently alter the character of the
20 neighborhood. As LCC's land use and community planning expert, Carol Eychaner⁵
21 explained, the proposed MIMP thwarted City planning and major institution policies adopted
22 pursuant to the Growth Management Act (“GMA”):
23

24
25 ⁵ Exhibit 22, at 1-2. Ms. Eychaner's substantial credentials are set forth in her March 3, 2009 written
26 testimony; to which her vitae and project list are attached as Attachment 1.

1 The most critical, overarching issues that must be decided for Children's Master Plan
2 are the proposals to: 1) concentrate enormous institutional growth outside of any
3 urban village, in a primarily single family neighborhood that is served and supported
4 by limited commercial and multifamily residential uses; and 2) significantly
5 expand major institution boundaries to accommodate the proposed growth. These
land use proposals seriously challenge and threaten the fundamental premise of the
City's growth strategy of locating intense development in urban villages, hubs and
centers, while protecting areas outside of urban villages from such development.

6 Ex. R-13.

7 These significant impacts are detailed in the record and include those related to the
8 Hartmann property, land use instability, the sprawl of institutionally owned and controlled
9 properties (inside and outside of MIO boundaries) and consequent isolation of non-
10 institutional properties between those owned and controlled by institutions, the "company
11 town" effect, and the increased likelihood of rezones for more intense use and further MIO
12 boundary expansions. Ex. 22, Eychaner Comments, at 9-15; Ex. R-13, at 5.

14 It was uncontradicted that Children's requested square footage is unprecedented in
15 single family areas that are outside of urban villages/centers, and that 1.5 million new square
16 feet is six times the amount of development that was approved in Children's last master plan
17 in 1994. Ex. 22. The cumulative impact of the proposed expansion, when considered with
18 other institutions in the area (including both Talaris and University of Washington), is
19 significant. The precedential effects of the expansion with regard to other rezones and
20 conversions to institutional use in the Laurelhurst area and with regard to other major
21 institution expansions similarly located outside of urban villages throughout Seattle would be
22 equally significant. No one could mistake what Children's MIMP demanded as a minor
23 oversight or inconsequential variation. It would reflect an unmistakable and precedential sea
24 change.
25
26

1 Particularly after it was revised by order of the Examiner in response to LCC's appeal of
2 its inadequacies, the City's own EIS for the Children's project acknowledged, albeit as
3 blandly as possible, that the development proposed in the master plan was "inconsistent
4 with" and "at odds with" the City's overarching strategy for directing growth toward
5 urban villages and centers and for protecting areas outside of villages/centers from
6 intense, large scale development. For example, the RFEIS noted the MIMP's
7 inconsistency with the following Comprehensive Plan policies:
8

- 9 1) **UVG29:** The master plan does not support and maintain the positive qualities of areas
10 outside of urban centers and villages because it "contrasts sharply with the smaller
11 scale development of the low density residential neighborhoods of the surrounding
12 area";
- 13 2) **UV35:** Because of its "departure from [the] neighborhood's existing residential and
14 commercial densities," the Master Plan "is clearly at odds with" Comp Plan direction
15 for "areas outside of urban centers and villages to remain primarily as residential and
16 commercial areas with allowable densities similar to existing conditions";
- 17 3) **UV38:** Because development in the master plan is not "comparable in scale to the
18 general intensity of development in the surrounding area" and proposes 1.5 million
19 square feet of new development outside of any urban center or village, the master plan
20 is "inconsistent" with Comp Plan intent to permit only limited amounts of
21 development outside of urban centers/villages and to "direct the greatest share of
22 growth to the urban centers and villages";
- 23 4) **Comp Plan urban village strategy discussion (introduction to goals and policies):**
24 The master plan is "at odds with" the Comp Plan's growth strategy that directs "future
25 growth primarily to areas designated as centers and villages," directs job growth to
26 "urban centers – areas that already function as high density, concentrated employment
centers with the greatest access to the regional transit network" and to hub urban
villages, and allows only "modest growth" to be "dispersed, generally at low density,
in various areas outside centers and villages";
- 5) **UVG37:** The master plan is "inconsistent with" the Comp Plan's goal of allowing only
"limited amounts of development in areas of the city outside urban centers and
villages to maintain the general intensity of development that already characterizes
these areas and to promote the targeted level of growth in village and center
locations";

1 6) LU77: The master plan “would be inconsistent with [the] multifamily preservation
2 policy” that seeks to “preserve the character of multifamily residential areas and
3 preserve development opportunities for multifamily use.”

4 See, HE Ex. R-4, May 28, 2009 Revised Final Environmental Impact Statement
5 (“RFEIS”), at pp. 3.7-10 through 13; 18-19:

6 The Examiner – charged with conducting the quasi-judicial hearing, reviewing the
7 voluminous record, and issuing findings, conclusions and a recommendation on the MIMP
8 proposal – clearly agreed that Children’s development of 2.4 million square feet at the
9 neighborhood site in Laurelhurst would have significant, long-term unmitigatable impacts on
10 the surrounding communities and streets, including with respect to transportation, land use,
11 and building height, bulk and scale impacts. See, e.g., HE F&R, Conclusions 37-46, at 8-9.
12 She noted in particular SMC 23.69.025 (“Intent of Major Institution Master Plans”), which
13 provides:
14

15 The intent of the Major Institution Master Plan shall be to balance the needs of the
16 Major Institutions to develop facilities for the provision of health care or
17 educational services with the need to minimize the impact of Major Institution
development on surrounding neighborhoods.

18 Likewise, SMC 23.69.032.E.2 requires that, for a major institution master plan to be
19 approved, it must be:

20 consistent with the purpose and intent of this chapter, [the major institution
21 code], and represent a reasonable balance of the public benefits of
22 development and change with the need to maintain livability and vitality of
adjacent neighborhoods. (Emphasis added)

23 In making this determination, the Code requires that consideration be given to “the reasons for
24 institutional growth and change” as well as the extent to which the growth and change will
25 significantly harm the livability and vitality of the surrounding neighborhood.” Id. As the
26

1 Hearing Examiner observed, neighborhood context is key to the “reasonable balancing”
2 required for master plan review:

3 Balancing the need of an institution to change, and the benefits associated with that
4 change, with the need to protect the livability and vitality of adjacent neighborhoods
requires an appreciation of the context for the balancing.

5 HE F&R, Conclusion No. 39, at 29. She then acknowledged the inescapable: the sheer
6 magnitude of Children’s proposed expansion – in a low scale, low density area outside of any
7 urban village – is in direct conflict with the urban village growth strategy that is the
8 foundation of the City’s comprehensive planning efforts pursuant to the GMA:
9

10 It is apparent from the RFEIS’ Land Use section that Children’s expansion under
11 the proposed MIMP is inconsistent with the City ’s urban village strategy.
12 Although major institutions are permitted outside urban villages/centers,
13 Children’s seeks heights that exceed those of any other major institution located
14 outside an urban village or center. Exhibit 22, Attachments H and I. The
15 significant, unmitigated traffic, and height, bulk and scale impacts associated
with Children’s proposed expansion result largely from the fact that the MIMP
proposes development outside an urban village at an intensity that is designed
for development within an urban village. Children’s is asking that the
proverbial "square peg" be forced into a "round hole," but it does not fit.

16 HE F&R, Conclusion No. 43, at 29 (emphasis added). The Hearing Examiner further
17 concluded, with respect to the proposal’s inordinate transportation impacts on area streets and
18 arterials:

19 When a major institution that produces thousands of daily trips during peak
20 hours is located in an area with two severely congested transportation corridors
21 that are utilized by 50% of its employees, it may be necessary to explore a less
22 ambitious expansion.

23 HE F&R, Conclusion No. 44, at 29.⁶
24

25 ⁶ The Hearing Examiner found, “primary access to Children’s is via the Northeast 45th street corridor
26 (San Point Way NE and NE 45th Street Interstate 5), or via the Mountlake Boulevard corridor (San

1 That Children's forced the outcome about which it now complains is evident from the
2 Examiner's pointed description of the Hospital's refusal to consider MIMP alternatives with
3 less overall development:

4 Children's did not evaluate any alternatives that included less than 2.4 million
5 square feet of development area. Instead, the alternatives considered different
6 ways to configure the same amount of development space on the existing campus
7 and Hartmann site, and later, on an expanded campus that included both the
8 Laurelon Terrace and Hartmann sites. This made it impossible for anyone to
determine what facilities might be lost, and what portion of total need unmet, if
development square footage had to be reduced in order to protect the livability
and vitality of adjacent neighborhoods. (HE F&R, Finding 41, at 8).

9 In this situation, it is essential to scrutinize need relative to alternative
10 development scenarios. Children's has avoided this scrutiny by not providing any
11 alternatives that would afford less than 2.4 million square feet of development
12 area. The Code provides that "appropriate" institutional growth within boundaries
13 is to be permitted while minimizing associated adverse impacts. SMC 23.69.002
14 A. And the major institution's ability to change, and benefits associated with that
15 change, are to be balanced with the need to protect the livability and vitality of
16 adjacent neighborhoods. SMC 23.69.002 B. The Code does not dictate what that
17 balance should be. Therefore, even if Children's could demonstrate that it should
18 absorb the entire statewide need for specialty pediatric care, it is not necessarily
19 entitled to this intensity of development, in this place, at this time. (HE F&R,
20 Conclusion 46, at 30 (emphases added)).

21 As noted, the Examiner has drafted for the Council a fallback condition of approval
22 which would give the hospital its full 2.4 million gross square feet. LCC understands that the
23 Examiner was trying to ensure, as a contingency, an alternate approach in the event that it did
24 not uphold her decision. However, even if the Council did not step up to the Examiner's
25 denial recommendation, the remedy for Children's refusal to even allow consideration of a
26 reduced square footage expansion is not to accept the inappropriate square footage it

Point Way NE and Montlake Boulevard NE to SR 520). Approximately 50% of Children's employees
travel one of these corridors to reach Children's." HE F&R, Finding No. 9, at 3.

1 demands, but to specify a reduced gross square footage that achieves a better balance between
2 Children's desire to grow and the neighborhood.

3 As the Examiner correctly concluded (HE F&R, Conclusion 46, at 30 (above)) even if
4 the proposed, full expansion were "needed" (which has not been determined), the Major
5 Institutions Code requires a balancing of need with the protection of the neighborhood. A
6 more moderate (but still intensive by any standard) development program is required to
7 reduce significant neighborhood impacts and achieve the Code-required balance.
8

9 In light of the foregoing, if the Council were to reverse the Hearing Examiner's denial
10 recommendation, any resulting Master Plan approval should be conditioned, as was urged by
11 LCC throughout this master plan process, on new development of no more than 704,000 gross
12 square feet.⁷ This "reduced" amount is still nearly 3 times the amount of new development
13 that was approved in Children's last Master Plan and would almost double Children's current
14 facility. As such, it is still a significant expansion that will have significant impacts.
15

16 Under this alternative, the maximum allowable square footage within the MIO (full
17 build out of new projects combined with current actual development of 850,000 square feet)⁸
18 would be 1.554 million gross square feet. This would still allow all new development projects
19 proposed by Children's under Phase 1 of its proposed Master Plan as well as one of its more
20 speculative Phase 2 projects, including:
21

- 22 • Bed Unit North (Phase 1; 592,000 gsf);
- 23

24 ⁷ This includes above-and-below square footage, including mechanical and circulation areas, but not
25 including parking garages).

26 ⁸ The current MIMP allows an overall gsf of 900,000 but Children's has developed approximately
850,000 gsf.

- Ancillary/Ambulatory expansion (Phase 2; net 112,000 gsf, after demolition of Children's existing D and F wings)

In addition, new parking spaces and structures would be limited to the equivalent of the Phase 2 Southwest parking garage (1100 spaces).⁹

If the Council does not adopt this more specific moderate development approach, it should remand the matter pursuant to SMC 23.69.032.I.2, SMC 23.76.054.E.2, and Council Rules VI.C.1.e.iii and VIII.C.2 (Rules for Quasi-Judicial Proceedings), so that a new MIMP proposal – with overall square footage reduced to substantially the equivalent extent – can be developed for review by the City in order to achieve the code-required balance between public need and neighborhood livability and vitality.

B. The Hearing Examiner's Fallback Condition Which Allows Children's a 160 Foot Height District – Nearly Twice the Height of Its Existing Buildings – Would Be Inappropriate Even If The Master Plan Were Not Denied

Children's proposes an MIO height increase to 160' (with building heights conditioned to 140' and 125') that is unprecedented in its own current master plan, in the Laurelhurst community and in any master plan for a major institution outside of an urban village. The Examiner's fallback option to accept the proposed MIO 160' is inconsistent with her own findings and conclusions that such heights are not compatible with the area's existing built character and that they create significant height bulk and scale impacts that cannot be

⁹ Note: FAR (Floor Area Ratio) calculation would be: 1,554,000 total gross square feet / 1,239,282 square feet of site area (without Hartmann property) = 1.25. Consistent with the Hearing Examiner's methodology for calculating FAR, below-grade parking and rooftop mechanical equipment are excluded from the FAR limit. Thus, the effective maximum allowable FAR for this development program would be 1.25, which is significantly higher than Children's current master plan (FAR .9) and higher than the FARs for other major institutions in similar settings outside of urban villages/centers.

1 reasonably mitigated. Therefore, in the event the Council does reject the Examiner's
2 recommendation of outright MIMP denial, the subject MIO should be limited to 105' as
3 argued by LCC throughout the process.

4 Children's master plan proposal includes several height district rezones, which can
5 only be approved if they meet the general rezone criteria and criteria for major institution
6 rezones in SMC 23.34.008, and 23.34.124. Currently, most of Children's campus is
7 designated with MIO heights of 37', 50' and 70'. The highest MIO in the existing master
8 plan is 90'; it covers a comparatively small portion of the campus and is partially
9 conditioned with an even lower 74' height limit. Exhibit 45, Final Master Plan, at p. 63.

11 Children's MIMP proposes heights of 37, 50, 70, 90, and 160 feet on the main
12 campus, and 65 feet on the Hartmann site. HE F&R, Finding 65, at 12. Children's highest
13 proposed MIO is 160'. It covers most of Laurelon Terrace and a portion of the existing
14 campus that borders Laurelon Terrace. HE F&R, Finding 66, at 12; Exhibit 93. The
15 proposed MIO 160 is divided into two height subareas – 125' and 140'. HE F&R, Finding
16 67, at 12. However, Children's requested MIO 160 – even as modified to 140' and 125' – is
17 higher than any MIO ever approved by City Council for major institutions that are outside
18 of urban villages. HE F&R Conclusion 43, at 29, citing Ex. 22, Attachments H and I. The
19 unprecedented MIO heights are more than five and six times the 25-foot and 30-foot heights
20 allowed in the single family and low rise multifamily zones that underlie Children's
21 development sites and surrounding residential properties. Ex. 22 at p. 2. Accordingly, the
22 structures that Children's proposes to develop under its Master Plan would be substantially
23 taller than any built under its current Master Plan. A hospital facility that is already bulky,
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1 has substantial mass, and stretches across the hillside would triple in size, extending its
2 height, bulk and scale impacts to new properties and areas of the neighborhood that are
3 zoned for and developed with low scale structures.

4 Reviewing the voluminous record and listening to testimony on the subject, the
5 Examiner concluded that the significant height, bulk and scale impacts resulting from these
6 extreme height districts proposed by the hospital, particularly on neighborhoods to the south
7 and west of the hospital, could not be realistically ignored or successfully mitigated:
8

9 The EIS demonstrates that the proposed MIMP will have significant height, bulk
10 and scale impacts on existing residential areas to the south and west, and
11 testimony from the City's environmental consultant confirmed these impacts. (HE
F&R, Finding 76, at 13-14).

12 [T]he 20-foot west setback along 40th Avenue Northeast, even in combination
13 with the adjacent street, a 60-foot deep MIO 50, and upper level setbacks would
14 not provide an adequate transition between the lowrise multifamily and
15 commercial development to the west and the proposed 125- and 140-foot towers
16 across the street. See Exhibit 22, Appendix H. Realistically, there is no
17 reasonable setback and/or landscaping that could mitigate the impact in this
location. Although the Director determined otherwise in the FEIS, this is a
significant adverse height, bulk and scale impact that cannot be mitigated under
the proposed scale of development. (HE F&R, Conclusion 19 at 25 (emphasis
added)).

18 The single-family and lowrise multifamily residences along Northeast 45th Street
19 and 40th Avenue Northeast, respectively, are adjacent to well established lowrise
20 zoning and development. The impact of rezoning that property to MIO 160/140
21 and MIO 160/125, and the anticipated corresponding development, cannot be
22 minimized by the use of transitions in height, upper level setbacks and 20-40
23 foot setbacks. *See* SMC 23.34.008 E.1. Similarly, height limits at the MIO
24 160/MIO 140 and MIO 160/MIO 125 district boundaries would not be
compatible with the adjacent single-family and lowrise multifamily and
commercial heights. *See* SMC 23.34.124C.2. Although transitional height
limits of MIO 37 and MIO 50 would be provided on the south, and MIO 50 on the
west, they are of insufficient depth to reduce the impact of the adjacent 140-foot
and 125-foot towers. (HE F&R, Conclusion 37, at 28 (emphasis added)).

25 The Examiner further concluded that, in addition to having “stunning” impacts on the
26

1 surrounding neighborhood, the proposed MIO 160/140 and MIO 160/125 heights failed to
2 meet the criteria in SMC 23.34.008:

3 Although greater than 40 feet, the proposed MIO 160/140 and MIO 160/125
4 districts may be considered outside an urban village, but only if the proposed
5 heights would be consistent with an adopted neighborhood plan, a major
6 institution's adopted master plan, or the existing built character of the area. SMC
7 23.34.008 E.4. Laurelhurst is outside an urban village and has no adopted
8 neighborhood plan. The proposed heights are not consistent with Children's
9 adopted MIMP, which caps heights at 74 feet. And the proposed heights are
10 not consistent with the area's existing built character, which consists of one-and
11 two-story single-family residences, lowrise multifamily development, and a
12 small amount of lowrise commercial development. The only non-
13 institutional development in the area that is not lowrise is the 100-foot
14 nonconforming condominium west of Sand Point Way and south of Hartmann.
15 However, that building is an anomaly, and is not immediately adjacent to any
16 single-family or lowrise multifamily development. From the west and south,
17 impact of towers 95 to 110 feet taller than the adjacent single-family or lowrise
18 development will be stunning. (HE F&R, Conclusion 38, at 28 (emphasis added)).

19 These findings and conclusions by the Examiner contributed substantially to her
20 recommendation that Children's proposed MIMP be denied.

21 The Examiner's conclusions respecting the requested height rezones and her
22 recommendation of denial validate LCC's consistent request that more moderate heights be
23 substituted for Children's all or nothing approach. LCC suggested that the proposed MIO
24 160 height district be reduced to MIO 105 (together with the upper level setbacks
25 recommended by the Examiner in fallback Condition No. 5), which would bring the
26 proposed building heights into the range of other major institutions' height districts that are
located outside urban villages.¹⁰ HE Finding 66. The compelling rationales for this approach

¹⁰ MIO 105 would still be 3.5 times higher than the base heights allowed in the single family and lowrise multifamily zones that surround Children's campus and in the single family zone on the campus itself.

1 were included in the record before the Examiner. *See, e.g.,* Ex. 5, Appendix E, at 41 of
2 “Organization” comment letters; CAC minority report (Ex. 8 at 246) (lower height is needed
3 to maintain the area’s single family character near the corner of NE 45th Street and 40th
4 Avenue NE, which is the gateway to the residential neighborhood); CAC minority report
5 (Ex. 8 at 246) (18’ grade change between Laurelon Terrace, and the current campus
6 accentuates structure height, making MIO 160 (even conditioned to 140’ or 125’) too high
7 in this location).

8
9 As noted, MIO 105 would still be higher than any height approved in Children’s
10 current master plan. MIO 160 heights, which is what Children’s demands, are currently found
11 only in the City’s most intensely developed urban centers, First Hill and the University
12 community. Higher MIO heights of 240 feet are similarly located only in designated urban
13 centers. HE Ex. 22, at 11, and Attachments H and I, cited at Conclusion 43, HE Findings and
14 Recommendation.

15
16 After citing as contributing factors to her denial the outsized MIO 160/140 and MIO
17 160/125 height districts demanded in Children’s Plan, the Examiner offers the following:

18 [I]f the Council approves the Master Plan as modified [by enumerated conditions
19 of approval] the Council should also approve rezones for the Major Institution
Overlay height districts as illustrated in Exhibit 93.

20 Exhibit 93 (attached to the Examiner’s Recommendation) adopts the MIO 160 height district,
21 with subarea modifications to 140’ and 125’. In addition, in Condition 3, the Examiner
22 recommends – again per Exhibit 93 – a dividing line between the 140’ and 125’ subareas
23 within the 160’ district, but does not reduce the heights despite the impacts acknowledged in
24 her denial conclusions.
25
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1 Again, it is understandable that the Examiner, anticipating that the Council might not
2 step up to denial, included a fallback as reflected in Condition No. 3. However, expediency
3 aside, the MIO 160' district (containing 140' and 125' subareas), is still starkly inconsistent
4 with the Examiner's conclusions respecting the inappropriate height, bulk and scale of
5 Children's proposal, the proposed height district's inconsistency with the criteria in SMC
6 23.34.008, and the proposal's failure to achieve the Code-required "reasonable balancing" to
7 minimize major institution impacts on surrounding neighborhoods. These conflicts should
8 not be embraced – even as a fallback.
9

10 Instead, in the event the Council reverses the Hearing Examiner's denial
11 recommendation and determines that it will approve the MIMP, approval should be
12 conditioned on reducing the proposed MIO 160' (both 140' and 125' subareas) that
13 straddles the existing campus and Laurelon Terrace to MIO 105.'

14 **C. The Hearing Examiner's Fallback Position Regarding Council Approval Would**
15 **Allow Inappropriate MIO Boundary Expansion to Include Residential Hartmann**
16 **Property, Across Sand Point Way**

17 To facilitate its proposed 2.4 million square feet of development, Children's MIMP
18 proposes to substantially expand the hospital's current 21.7 acre MIO campus boundary by
19 including the 6.75-acre Lowrise 3 (L3) Laurelon Terrace property to the southwest and the
20 1.7-acre Hartmann property, also residentially zoned L3, across Sand Point Way. In the
21 Examiner's Findings and Recommendations, she concludes that if, contrary to her decision,
22 SCH was allowed the full 2.4 million square feet of development upon which it insists, the
23 Hartmann expansion might offset the unprecedented height, bulk and scale impacts the
24 proposal would have on the surrounding area:
25
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1 . . . If it is accepted that Children's must fill the total statewide need for specialty
2 pediatric care, then allowing 150,000 square feet of development and 225 parking
3 spaces on the Hartmann site would further reduce the heights required on the main
expanded campus. It would also reduce the proximity of new development to most
surrounding single-family, and some of the surrounding multifamily development.¹¹

4 Following up, in Conclusion No.12 the Examiner states– with more than a hint of misgiving:

5 Concern with Children's "leapfrogging" Sand Point Way to establish an MIO
6 boundary on the west side is understandable, but the benefits to the neighborhood of
7 placing some of the proposed development at Hartmann outweigh the risks.

8 HE F & C, at p. 24.

9 The Examiner's reluctant rationale here is the land use analogue of "We had to kill the
10 village to save it" logic. Reaching across Sand Point Way to convert the Hartman site from
11 residential zoning to part of the Children's Major Institution campus might "reduce the
12 proximity of new development to most surrounding single-family, and some of the
13 surrounding multifamily development". (Emphasis added). However, the proximity of
14 residential development to the existing campus boundaries would remain the same. Residents
15 might just not see as much "new" development but, even under the Hartmann development
16 scenario, they will still see massive, unprecedented structures that the Hearing Examiner
17 characterized as "stunning",¹² with "significant height, bulk and scale impacts."¹³ Meanwhile,
18 the leapfrog across the arterial to Hartman would irrevocably eliminate an additional 1.7 acres
19 of residentially-zoned land and use it to expand the institutional campus.
20

21 Further, the record reflects that the "risks" the Examiner describes in Finding 51
22 would be posed by any such irrational MIO expansion – regardless of its overall level of
23

24 ¹¹ HE F&R, Conclusion 9, at 23. (Emphasis added.)

25 ¹² HE F&R, Conclusion 37, at 28.

26 ¹³ HE F&R, Finding 76, at 13-14.

1 development at full build out – into a new part of the surrounding residential neighborhood,
2 across a major arterial. These risks are unmitigable. The leapfrog across the arterial to
3 Hartman, in an area well-established for residential use, would irrevocably eliminate an
4 additional 1.7 acres of residentially-zoned land from the neighborhood. Non-institutional uses
5 and properties would be sandwiched between Children’s MIO and isolated from other such
6 non-institutional uses. The impacts of Children’s major institutional use would be moved
7 closer to residential uses that are now somewhat shielded from the impacts. Leap-frogging
8 the MIO boundary to Hartmann would set a precedent for future MIO boundary expansions in
9 Laurelhurst and in other neighborhoods outside of urban villages. HE F&R, Finding 51, at
10 10.
11

12 The problem in the Examiner’s approach and its inconsistency with the Code requires
13 some context, presented below.
14

15 Children’s current 21.7 acre MI campus – approved through a MIMP in 1994 – is
16 located in the Laurelhurst neighborhood, which is primarily single- and multi-family
17 residential with height limits between 25-30 feet. HE F&R, Finding No. 6, at 2-3 (citing Final
18 Master Plan). It is bounded on the west by the Laurelon Terrace property, zoned Lowrise 3
19 (L3). Id. A triangular property to the southwest between the Laurelon property and Sand
20 Point Way is zoned Neighborhood Commercial with a 30-foot height limit as well. Id. This
21 triangular property is developed with a branch of Wells Fargo bank and the Springbrook
22 professional buildings (in which Children’s has a partnership interest). Id; HE F&R,
23 Finding 8, at 3. Children’s also leases 6,700 square feet in the Springbrook buildings.
24 Id.
25
26

1 L3 residential zoning and development continues across Sand Point Way, with the
2 exception of the nonconforming one-story medical office use in the Hartmann Building. Id.
3 Further to the west is the Burke- Gilman Trail, and then the Bryant neighborhood with SF-
4 5000 zoning and development. Id. In 2000, Children's acquired the 1.7 acre Hartmann site
5 and the 16,228 square foot Hartmann Building, and currently maintains an existing clinic and
6 office there. HE F&R, Finding 8, at p. 3. Children's also has an interest in the Springbrook
7 buildings at Northeast 45th Street and Sand Point Way and leases 6,700 square feet in those
8 buildings. Id. Both Hartmann and Springbrook are located outside, but within 2,500 square
9 feet of the existing MIO. Id.
10

11 Children's has also acquired – since this Master Plan process began – nine single-
12 family residences located directly across from its east and south boundaries, although they
13 are not targeted for development in this proposed Master Plan. Id. Throughout the course of
14 the master planning process, Children's has also bought many of the Laurelon Terrace
15 condominiums in anticipation of absorbing that property into the MIO and converting it to
16 hospital uses.
17

18 In order to prevent institutional sprawl and the isolation of private properties and uses
19 from others in the neighborhood, the City's major institution goals and policies, and the Land
20 Use Code (SMC 23.69.002.C and E), strongly discourage the expansion of MIO boundaries.
21 The Laurelhurst neighborhood is already at a "tipping point" at which the institutional use and
22 impacts (from Children's, the University of Washington and Talaris), threaten the viability
23 and vitality of the community.
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1 The MIO expansion to the Hartmann property would be across an arterial, Sand Point
2 Way NE, into an area that is well established for residential use and that has no zoned or
3 developed major institutional use. Ex. 22, at 8-9 and Attachment G; Ex. R-13, at 4-5. As
4 shown on maps in the record, the Hartmann property is separated from Children's current
5 campus by two streets (40th Avenue NE and Sand Point Way) and two private properties,
6 Laurelon Terrace and the Wells Fargo site. Id. Essentially the same separation would exist
7 even if the MIO Boundary were to be expanded to include Laurelon Terrace. In light of the
8 location of the Hartmann parcel, *vis a vis* the current MIO, the proposed MIO Boundary
9 expansion to encompass the Hartmann site goes far beyond even benign encroachment on the
10 surrounding neighborhood. Id.

12 Children's proposed institutional designation and use would be far more intense than
13 the current Lowrise 3 zoning designation that applies to the Hartman site and far more intense
14 than the use that currently exists on the Hartmann property. Id. It would also be more intense
15 than the site's lowrise multifamily land use designation in the Comprehensive Plan, and more
16 intense than the multifamily and single family residentially zoned and developed uses to the
17 north and west of the Hartmann property. And, it would permanently remove the Hartmann
18 property from the neighborhood's supply of residentially zoned land at the same time that the
19 Laurelon Terrace apartments would be eliminated as well. Id. The isolation of non-
20 institutional properties that would be "sandwiched" between Children's development on the
21 Laurelon Terrace and Hartmann properties (including the Wells Fargo site), and the resulting
22 land use and zoning instability – a condition and impact acknowledged in Children's EIS and
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1 by the Examiner – is made worse by the inclusion of Hartmann in the MIO boundary. Ex. R-
2 4, RFEIS at p.3.7-39; HE F&R, Conclusion 45, at 30.

3 The Examiner’s forgiving approach to the pretense of adding the Hartman site to the
4 Children’s campus – across two streets (including an arterial) and the Wells Fargo property –
5 may be explained by a misunderstanding of the history of the Hartman site. Finding 124
6 states that the Hartmann property was acquired by Children’s as far back as the 1950’s. In
7 fact, King County real property records reflect that Children’s did not purchase the Hartmann
8 Property until just a few years ago, in 2000. Ex. 22, Attachment G, Table 1. This was nearly
9 twenty years after the City Council had rezoned the Hartmann Property to Lowrise-3 (multi-
10 family residential), deliberately establishing a dividing line between the commercial and
11 lowrise multifamily zoning along the west side of Sand Point Way NE.

13 Equally important, Children’s purchase of Hartmann in 2000 was also several years
14 after Children’s current (1994) MIMP had been adopted and after the Hartman Property’s
15 future land use had been designated “multifamily” – not major institution use – in the City’s
16 1994 Comprehensive Plan. Thus, the Hartmann property was not a long-held asset that
17 Children’s has been waiting to develop since it first relocated to Laurelhurst in the 1950s.
18 This zoning and property acquisition history is important to assessing the City’s intended
19 residential land use character of the Hartmann property and area.

21 Further, the Hartmann property – like the rest of Laurelhurst, including Children’s
22 current campus – is in an area that is outside of an urban village. The City’s extensive
23 citywide comprehensive planning process undertaken in the mid-1990s resulted in the urban
24 village growth strategy, the identification of urban villages, and – equally critical to the
25
26

1 planning strategy – the designation of urban village boundaries. Laurelhurst (including
2 Children's) was not considered appropriate for any kind of urban village/center designation
3 and the resulting land use intensities allowed by such designation. Ex. R-13, at pp. 4-5; HE
4 F&R, Conclusion 42, at 29.

5 The fact that the Laurelhurst neighborhood and Hartmann Property are outside of any
6 designated urban village/ center, employment center or transportation hub means that
7 extending the MIO boundary as proposed would contribute to arterial sprawl and to even
8 more intense traffic, development and job growth outside of urban villages – the antithesis of
9 the urban village growth strategy.
10

11 The Examiner clearly understood the serious precedent that approval of Children's
12 proposal – including the expansion across Sand Point Way to the Hartmann site– could
13 establish, putting other neighborhoods with major institutions at risk:

14 The MIMP approved for Children's may well be viewed as precedential by other
15 institutions located outside urban growth areas. It may also send a signal to the
16 owners of property at the perimeters of those major institutions about the stability
17 of neighborhood zoning. It will clearly shape the character of the Laurelhurst
18 neighborhood. And it will decide the future of some of the properties adjacent to
19 the perimeter of the expanded campus. *See Exhibit 22, Attachment G.*

20 HE F&R, Conclusion 45, at 30. In light of this, a “fallback” option regarding the proposed
21 expansion to Hartmann cannot be justified.

22 The Council should adopt the Examiner's considered recommendation and deny
23 Children's MIMP proposal. However, if the proposal is approved in any form, it should be
24 expressly conditioned on the exclusion of the Hartmann property from the MIO boundary.
25
26

1 **D. The Hearing Examiner's Fallback Position Would Allow Inappropriate Vehicle**
2 **Access From 40th Avenue NE**

3 In order to support its 2.4 million square feet of development, Children's has proposed
4 general vehicle access to the site from Sand Point Way, at Penny Drive, and from 40th Ave
5 NE, into the SW parking garage (which is proposed to provide parking for 1100 vehicles).
6 HE F&R, Finding 24, at 6. It also proposes emergency vehicle access from 40th Ave NE,
7 which would result in two driveways into the campus from this residential "local access"
8 street. HE F&R, Finding 95, at 16.

9 Hearing Examiner Conclusion No. 26 provides:

10 Although there is significant neighborhood concern about congestion on 40th
11 Avenue Northeast, the evidence in the record shows that the two access points
12 proposed for this street will operate at LOS C or better, and that moving one of
13 the access points to Sand Point Way would degrade traffic operations on that
14 arterial. The CAC's suggestion to limit access from 40th Avenue Northeast to one
15 entrance should not be included as a condition if the MIMP is approved.

16 LCC appeals Examiner's Conclusion No. 26 because, in the event that the Examiner's
17 denial decision is not upheld, it would inappropriately allow the hospital to usurp this
18 neighborhood residential street for institutional access.

19 As the Examiner acknowledged, the record reflects substantial concerns supporting
20 elimination of both access points on 40th Avenue NE. HE F&R, Finding 96, at 16; HE F&R,
21 Conclusion 26, at 26. 40th Avenue NE, located adjacent to Laurelon Terrace, intersects with
22 NE 45th Street at the southwest corner of the property, and Sand Point Way to the north. Ex.
23 No. 8, CAC Final Report (Minority Report attached as Appendix 1), at 247. It is a residential
24 street used widely by residents and school children and school busses. The local access street
25 is also a major route out of the neighborhood . Id.

1 Further, as was explained in the record, 40th Avenue NE is the major route used by
2 emergency service vehicles from Fire Station 38 to enter the Laurelhurst community. Id., at
3 247-248. The current three-minute response time would be increased and would impact the
4 safety of neighbors in the community with medical and other emergencies. Id.

5 Therefore, the need to avoid vehicular and nonvehicular safety impacts cannot be
6 overstated. Id. Use of this street to enter Children's SW Parking Garage and
7 emergency/ambulance area would create traffic congestion and conflict among the competing
8 hospital, fire department and other community uses. Id.¹⁴

9
10 Institutional use of 40th Avenue NE will force neighborhood traffic onto other
11 residential streets near neighborhood schools, churches, and the Laurelhurst Playfield. This
12 will impact children riding bikes and walking to school and playing in the area. Ex. 8, at 248.

13 There is no necessity for this to occur. Rather, it reflects that Children's proposed
14 MIMP exports impacts to adjacent neighborhood streets through failure to accommodate the
15 institution's substantial traffic queue on the MIO campus itself:
16

17 From the testimony provided already at this hearing, it appears that the hospital
18 may require that these entrances remain because they need 40th Avenue NE to
19 hold the traffic queue that will be created by such a great increase in development.
40th Avenue NE between Sand Point Way and NE 45th Street is not an appropriate
holding area for the hospital's queue.

20 Ex. 2, Ogden Comments, at 4.
21

22 ¹⁴ These access concerns were specifically addressed by LCC members at the hearing:

23 Due to the physical landscape of the area and the acreage occupied by the hospital, there are very few
24 ways to get in and out of the neighborhood. Egress from the hospital, especially from one-third of its
parking capacity, onto 40th Avenue NE would greatly impact Laurelhurst residents' ability to get in and
out of the neighborhood.

25 Ex. 2, March 10, 2009, Comments by Liz Ogden, Vice President of LCC, at p. 4.
26

1 The usurpation of a residential street for non-residential uses is a poor practice in any
2 circumstance and would particularly set a bad precedent for instances in which neighborhoods
3 are trying to survive while coping with major institutions. Here, Sand Point Way – the
4 arterial – should be used for hospital traffic and access; large volumes of hospital traffic
5 should not be diverted onto a residential street, creating new and unnecessary burdens and
6 risks for the surrounding residential community.
7

8 Moreover, as is the case with the Hartman MIO expansion, if the maximum square
9 footage allowed under Children's MIMP is significantly reduced -- as the Examiner's
10 conclusions clearly indicate it should be to comply with the City's codes and policies -- the
11 purported necessity of the additional access points on 40th Avenue NE would be significantly
12 decreased as well.
13

14 In light of the foregoing, in the event the Council overturns the Examiner's denial, any
15 MIMP approval should be expressly conditioned as follows:

16 Vehicle access to the main campus/Laurelon Terrace site shall be from Sand Point
17 Way, and may include the Penny Drive access (in its existing or a modified
18 location) as well as a second access, both used for any purpose. There shall be no
19 vehicle access to the main campus/ Laurelon Terrace site from any other street,
20 except for the fire and service access points on NE 45th and NE 50th Streets.

21 **E. The Hearing Examiner's Fallback Conditions Should Be Clarified to Reflect**
22 **That Construction of the Southwest Parking Garage Must Be Below-Grade**

23 As noted above, Children's MIMP proposes, as part of its Phase 2, a large, above-
24 grade parking garage in the southwest corner of the Laurelon Terrace property, at the
25 intersection of NE 45th Street and 40th Avenue NE. The proposed garage would be directly
26 across these local residential streets from single family zoned/developed properties, and at the

1 main gateway to the Laurelhurst residential community. With respect to setbacks along these
2 streets, the Examiner concluded as follows:

3 19. All setbacks proposed in the MIMP meet or exceed the setbacks required
4 in the underlying zones. However, the 20-foot west setback along 40th Avenue
5 Northeast, even in combination with the adjacent street, a 60-foot deep MIO 50,
6 and upper level setbacks would not provide an adequate transition between the
7 lowrise multifamily and commercial development to the west and the proposed
8 125- and 140-foot towers across the street. See Exhibit 22, Appendix H.
9 Realistically, there is no reasonable setback and/or landscaping that could
10 mitigate the impact in this location. Although the Director determined otherwise
11 in the FEIS, this is a significant adverse height, bulk and scale impact that cannot
12 be mitigated under the proposed scale of development.¹⁵

13 20. Similar reasoning applies to the 40-foot landscaped setback and MIO 50
14 on the south boundary of the Laurelon Terrace site relative to the single-family
15 development across Northeast 45th Street, a street with an average width of
16 approximately 54 feet. A more reasonable setback would be 75 feet, similar to the
17 rest of the south setback, together with a requirement for extensive landscaping.
18 This would likely require that the southwest garage be constructed below grade.
19 There is no evidence in the record that this was considered.¹⁶

20 Consistent with these conclusions, the conditions of approval the Examiner provided "if the
21 Council decides to approve the Master Plan" included the increased setbacks along both rights
22 of way:

23 5. Children's shall amend Section IV.D.1 of the Master Plan to add upper level
24 setbacks 80 feet deep, applied to portions of buildings higher than 50 feet, along the
25 western edge of the expanded campus on 40th Avenue Northeast from Sand Point
26 Way Northeast south to Northeast 45th Street, and 30 feet deep on Sand Point Way
from 40th Avenue Northeast to Penny Drive.

6. Children's shall amend Section IV.D.1 and Master Plan Figure 50, "Proposed
Structure Setbacks," to increase the south setback to 75 feet along the entire Northeast
45th Street boundary.

¹⁵ Emphasis added.

¹⁶ Emphasis added.

1 HE F&R, Conditions 5 and 6, at 31.

2 However, in addition to requiring the increased setbacks, any fallback MIMP approval
3 by the Council should explicitly recognize that this southwest “gateway” to Laurelhurst’s
4 residential community is an inappropriate location for an above-ground parking garage. The
5 Examiner had testimony before her regarding the feasibility and benefits of locating such
6 facilities below-grade. Many hospitals in the area have successfully constructed underground
7 parking. Ex 22, Eychaner Comments; Ex. 8, CAC Final Report (Minority Report attached as
8 Appendix 1), at 249-250. One example is Overlake Hospital, in downtown Bellevue by I-
9 405, which recently made effective use of limited land resources by constructing its new
10 multi-level hospital bed wing on top of its new, multi-level underground parking garage. Id.
11 An added benefit of locating garages underground is that it allows for the best use of limited
12 land by the hospital, and more land area for beds and associated facilities on the main campus,
13 while providing necessary mitigation for the neighborhood. Id.
14

15 The Examiner’s conclusions indicate concurrence with this approach. Her Conclusion
16 20 notes that increased setbacks – recommended in response to “significant” and unmitigable
17 height bulk and scale impacts – would likely have the effect of requiring that the southwest
18 parking garage be constructed below grade. She further includes in Condition 8 a prohibition
19 on “above-ground development within the setback areas... except as otherwise allowed in the
20 underlying zone.” However, because the MIMP is not specific with respect to the exact
21 location of the buildings it proposes, including the Southwest Parking Garage, further
22 specificity is necessary to avoid unintended consequences in the event that the Council does
23 not adopt the Examiner’s denial recommendation. To achieve required clarity and ensure
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1 consistency with the Examiner's conclusions and conditions, the Examiner's fallback
2 conditions of approval should be clarified to affirmatively state that the Southwest Parking
3 Garage must be built below grade.

4 **F. The Hearing Examiner's Fallback Conditions Should Be Amended to Require**
5 **That SCH Provide Full Comparable Replacement for Demolition of 136**
6 **Laurelon Terrace Garden Apartment Units**

7 The Seattle Displacement Coalition and the Interfaith Task Force on Homelessness
8 have filed an appeal of the Examiner's fallback conclusions and conditions with regard to
9 fulfillment of the Major Institution Code requirement for comparable replacement by a major
10 institution of all housing it chooses to demolish. LCC also appeals those conclusions and
11 conditions because they allow Children's the fiction that 136 units of demolished housing
12 assessed at approximately \$32 million can be "comparably replaced" by paying \$5 million.
13 As the Displacement Coalition/Task Force appeal explains, this approach is based on the
14 permissibility of a public taxpayer funded subsidy for the institution's demolition choice. It is
15 therefore antithetical to the purpose of the Code's comparable replacement requirement and
16 represents a diversion of public funds to support a private development project. For these
17 reasons, LCC appeals and joins in the Coalition/Task Force appeal, and incorporates here by
18 reference the appeal grounds, explanations, and relief requested in the that appeal.
19

20 **VI. CONCLUSION: RELIEF REQUESTED**

21 Based on the foregoing, LCC requests that the Council adopt the Hearing Examiner's
22 Recommendation and deny Children's proposed MIMP.
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1 However, in the event the Council departs from the Examiner's recommendation and
2 does not deny the proposed Master Plan, the Council should modify the proposed conditions
3 of master plan approval as set forth below and adopt consistent findings and conclusions:

4 1. Revise fallback Condition 1 to read:

- 5 1. Children's shall limit total development on the expanded campus to a total
6 of 1.554 million gross square feet, excluding parking;
- 7 2. Replace fallback Condition 3 with a condition that reduces the MIO 160 height district
8 to MIO 105;
- 9 3. Replace fallback Conditions Nos. 7 and 9 with a condition that eliminates the MIO
10 Boundary expansion to the Hartmann Property;
- 11 4. Add a condition requiring that the proposed Southwest Parking Garage, if constructed,
12 be located below existing grade;
- 13 5. Add a condition prohibiting hospital access of any kind to/from 40th Avenue NE
- 14 6. Add a condition for comparable housing replacement that is compliant with the Code
15 starting with a requirement for payment of the actual cost of replacement housing as
16 explained by the Coalition/Task Force.
- 17 7. **In the alternative**, Council should remand the matter pursuant to SMC 23.69.032.I.2,
18 SMC 23.76.054.E.2, and Council Rules VI.C.1.e.iii and VIII.C.2 (Rules for Quasi-
19 Judicial Proceedings), with specific instructions that a new MIMP proposal,
20 appropriately reduced in size and scale and consistent with the foregoing six
21 conditions, can be prepared by Children's that achieves the code-required balance
22 between the major institution's interests and protecting the surrounding neighborhood.
- 23 8. Provide all other relief that is necessary and/or appropriate in light of the purpose and
24 intent of LCC's appeal and the City's Major Institutions Code and related codes,
25 plans, and policies.

26 In conclusion, the Council should consider the words that the Examiner chose with
obvious care to describe the situation that Children's has created:

In this situation, it is essential to scrutinize need relative to alternative
development scenarios. Children's has avoided this scrutiny by not providing any


alternatives that would afford less than 2.4 million square feet of development area.(HE F&R, Conclusion 46, at 30 (emphasis added)).

LCC has always supported the reasonable expansion of Children's facility in a manner that will avoid "stunning" impacts on the surrounding community and its citizens in their daily lives.¹⁷ Children's chose a deliberate strategy of refusal to allow consideration of less than "all or nothing." The Examiner's denial recommendation was, therefore, compelled and must be upheld by the Council. We can all then get on with the business of creating a reasonable, balanced plan for the future of Children's and the Laurelhurst community.

Respectfully submitted this 25th day of August, 2009.

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¹⁷ HE F&R, Conclusion 38, at 28 ("From the west and south, impact of towers 95 to 110 feet taller than the adjacent single-family or lowrise development will be stunning.").